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09-CV-00785-CMP

8 UNITED STATES DISTRICT COURT  
 9 WESTERN DISTRICT OF WASHINGTON  
 10 AT SEATTLE

11 ROSEMARIE TROY and MIKKI COBB,  
 12 individually, and as class representatives,

13 Plaintiffs,

14 v.

15 KEHE FOOD DISTRIBUTORS, INC.

16 Defendant.

C 09-0785 JH

No.

17 COMPLAINT FOR VIOLATION  
 18 OF FAIR LABOR STANDARDS ACT  
 19 AND WASHINGTON STATE WAGE  
 20 LAWS

21 **Jurisdiction**

22 1. The Court has jurisdiction pursuant to 28 U.S.C. § 1331 and 29 U.S.C.  
 23 § 216(b) over plaintiffs' claims under the Fair Labor Standards Act, 29 U.S.C. §§ 201-219  
 24 ("FLSA"). The Court has supplemental jurisdiction pursuant to 28 U.S.C. § 1337 over  
 25 plaintiffs' state law claims, which are based on the Washington Minimum Wage Act, RCW  
 49.46 ("MWA"), RCW 49.48, and RCW 49.52, and state regulations issued thereunder.

26 **Named Parties**

27 2. Plaintiff Rosemarie Troy is a former employee of defendant Kehe Food  
 28 Distributors, Inc. ("Kehe") and resides in Puyallup, Washington.

3. Plaintiff Mikki Cobb is a former employee of defendant Kehe and resides in Bonney Lake, Washington.

4. Defendant Kehe is a foreign corporation doing business in King County and elsewhere in the State of Washington and the United States and is an employer subject to the requirements of the FLSA and Washington's wage laws.

## Facts

5. Plaintiff Troy was formerly employed by Kehe as a "sales representative" and as a "merchandiser." Plaintiff Cobb was formerly employed by Kehe as a "sales representative." Kehe sells and distributes food products to supermarkets and other retail outlets in Washington and throughout the country.

6. Plaintiffs and similarly situated Kehe employees routinely worked more than 40 hours per week during the three years prior to the filing of this complaint.

7. Plaintiffs and similarly situated Kehe employees were not paid time and a half overtime wages for all hours worked in excess of 40 hours per week during the three years prior to the filing of this complaint.

### Collective Action Allegations

8. Plaintiffs file this action on behalf of themselves and similarly situated co-workers, pursuant to the FLSA, 29 U.S.C. § 216(b). The class of potential plaintiffs encompassed by this collective action includes:

All individuals working as merchandisers (or similar job classification) in any state during the three years prior to the filing of this complaint; and all individuals working as sales representatives (or similar job classification) who derived more than 90% of his/her total commissions from sales to Albertson's stores in any state during the three years prior to the filing of this complaint.

9. The above-described employees routinely performed work in excess of 40 hours per week for which they were not paid time and a half overtime pay.

10. The employees so described are similarly situated to plaintiffs with respect to the legal and factual issues raised by this action.

### **Class Action Allegations**

11. Plaintiffs also file this lawsuit on behalf of themselves and similarly situated Kehe employees pursuant to the MWA and Fed. R. Civ. P. 23. The class of potential plaintiffs encompassed by this claim includes:

All Washington-based employees of Kehe who worked as merchandisers or sales representatives (or similar job classifications) during the three years prior to the filing of this complaint and thereafter.

12. The action is properly maintainable under Fed. R. Civ. P. 23(a) and (b)(3).

13. The class described in paragraph 12 is sufficiently numerous such that joinder of all of them is impractical, as required by Fed. R. Civ. P. 23(a)(1).

14. Pursuant to Fed. R. Civ. P. 23(a)(2), there are common questions of law and fact including, but not limited to: whether class members are subject to the overtime requirements of the MWA; whether the defendant failed to pay class members one and one-half times their regular rate of pay for overtime work; and whether the defendants, in failing to pay required wages, have acted willfully and with the intent to deprive plaintiffs and the members of the class of such compensation.

15. Pursuant to Fed. R. Civ. P. 23(a)(3), plaintiffs' wage and hour claims are typical of the claims of all class members and of defendant's anticipated affirmative defenses thereto.

1       16. The plaintiffs will fairly and adequately protect the interests of the class as  
2 required by Fed. R. Civ. P. 23(a)(4).

3       17. Pursuant to Fed. R. Civ. P. 23(b)(3), class certification is appropriate here  
4 because questions of law or fact common to members of the class predominate over any  
5 questions affecting only individual members and because a class action is superior to other  
6 available methods for the fair and efficient adjudication of the controversy.  
7

8                   **First Claim – Failure To Pay Overtime Wages In Violation Of The FLSA**

9       18. Plaintiffs repeat and reallege the prior allegations of this complaint.

10       19. Defendant violated the overtime provisions of the FLSA, 29 U.S.C. §207 *et*  
11 *seq.*, by permitting work in excess of 40 hours per week for which workers were not  
12 compensated at the overtime rate.

13       20. Defendant's violations were willful, thereby entitling plaintiffs and similarly  
14 situated Kehe employees to the three year FLSA statute of limitations.

16       21. As a result of defendant's acts, defendant is liable for overtime wages and  
17 liquidated damages under U.S.C. §216(b).

18                   **Second Claim - Failure To Pay Overtime Wages In Violation Of the MWA**

19       22. Plaintiffs repeat and reallege the prior allegations of this complaint.

20       23. Defendant's failure to pay plaintiffs and the Washington-based class members  
21 one and one-half times their regular rate of pay for hours worked in excess of forty in their  
22 workweeks constitutes a violation of RCW 49.46.130.

24       24. As a result of defendant's acts and omissions, plaintiffs and the Washington-  
25 based class members have been damaged in amounts as will be proven at trial.  
26

### **Third Claim - Willful Withholding Under RCW 49.52.**

25. Plaintiffs restate and reallege the allegations of this complaint.

26. By the foregoing, defendant's actions constitute willful withholding of agreed upon wages in violation of RCW 49.52.050 and .070.

27. As a result of defendants' acts and omissions, plaintiffs and the Washington-based class members have been damaged in amounts as will be proven at trial.

## Prayer for Relief

Wherefore, plaintiffs, individually and on behalf of the similarly situated employees, pray for relief as follows:

1. Certification of this case as a collective action pursuant to 29 U.S.C. §216(b);
2. Certification of this case as a class action pursuant to Fed. R. Civ. P. 23, the MWA, RCW 49.48 and RCW 49.52;

3. Court approved notice of pendency of this collective action to similarly situated employees pursuant to FLSA § 216(b);

3. Damages for lost wages in amounts to be proven at trial:

4. Exemplary damages in amounts equal to double the wages due to Washington-based class members, pursuant to RCW 49.52.070;

<sup>5</sup> Liquidated damages pursuant to the FLSA, 29 U.S.C. § 216;

6. Attorneys fees and costs pursuant to the FLSA, 29 U.S.C. § 216, and RCW 49.46.090, 49.48.030 and RCW 49.52.070;

|||||

**COMPLAINT FOR VIOLATION OF  
FAIR LABOR STANDARDS ACT  
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1           7. Prejudgment interest; and  
2           8. Such other and further relief as the Court deems just and proper.

3  
4           DATED this 12 day of June, 2009.

5           SCHROETER, GOLDMARK & BENDER

6             
7           MARTIN S. GARFINKEL, WSBA #20787  
8           ADAM J. BERGER, WSBA #20714  
9           Counsel for Plaintiffs